

AMENDED IN SENATE FEBRUARY 25, 1999

SENATE BILL

No. 126

Introduced by Senator Polanco

December 22, 1998

An act to amend ~~Section 1170~~ of Sections 1170, 2801, 2807, and 2808 of, and to add Sections 2808.3 and 2808.5 to, the Penal Code, relating to ~~sentencing~~ corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as amended, Polanco. ~~Sentencing—Corrections:~~
inmate rehabilitation: Prison Industry Authority.

(1) Existing law states the findings and declarations of the Legislature that (1) (a) the purpose of imprisonment for crime is punishment, (2) (b) this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances, and (3) (c) the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. Existing law provides that these findings and declarations shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders, and further provides that the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time

felony offenders consistent with the purpose of imprisonment.

This bill instead would provide that these findings and declarations shall not be construed to preclude educational, vocational, and drug treatment programs that are designed to rehabilitate nonviolent, first-time felony offenders and to reduce the rate of recidivism. The bill further would state the intent of the Legislature to encourage the development of policies and programs consistent with the intent to reduce the rate of recidivism.

(2) Existing law establishes the Prison Industry Authority under the direction of the Prison Industry Board and specifies the powers and duties of the board, its membership, and their compensation. The authority has jurisdiction over the operation of all industrial, agricultural, and service operations. Existing law also creates the Prison Industries Revolving Fund that is used to meet the expenses of the prison industries program, as specified. The board is also authorized to borrow money from the state and private sources to finance the program. The authority determines which work programs are to be established and the products to be made.

This bill would revise these provisions as follows:

(a) To provide that the purposes of the authority are, among other things, to provide productive employment that offers inmates a significant real world work experience and competitive work skills in order to increase their employability upon release through the development of skills, habits, and attitudes that employers seek and operate as a self-supporting prison work program.

(b) To specify that the products required to be purchased by the state or state agencies are substantially similar in either quality, cost, or availability to those available from commercial suppliers.

(c) To include a list of specified additional powers and duties of the board.

(d) To require the Department of Finance, in consultation with the authority and the Legislative Analyst's Office to develop a display in the 1999–2000 Governor's Budget of specified projected expenditures and revenues.



(e) *To require the Bureau of State Audits to conduct a performance and financial audit of the Prison Industry Authority, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *With respect to Sections 4 to 8, inclusive,*
2 *of this act, the Legislature hereby finds and declares as*
3 *follows:*

4 (a) *Prison work programs, in addition to reducing*
5 *inmate idleness and providing an effective tool for inmate*
6 *management, have the potential for providing inmates*
7 *with needed skills to increase employability, enhance*
8 *self-worth, and ultimately reduce the likelihood of*
9 *recidivism.*

10 (b) *Rehabilitated parolees have historically suffered*
11 *from high levels of unemployment as compared to*
12 *California residents in the general population. In the*
13 *absence of appropriate interventions leading to increased*
14 *employability of this population of parolees, the*
15 *prevalence of repeat offenders will continue to*
16 *proliferate.*

17 (c) *Current law provides state agencies no recourse*
18 *but to purchase goods manufactured by the Prison*
19 *Industry Authority regardless of quality or cost when*
20 *compared to goods available through the private sector.*

21 (d) *There has been little ongoing legislative review of*
22 *Prison Industry Authority operations given the*
23 *authority's continuous appropriation of funding support,*
24 *which exempts the authority from oversight under the*
25 *annual Budget Act.*

26 SEC. 2. *With respect to Sections 4 to 8, inclusive, of*
27 *this act, the Legislature expresses its intent as follows:*

28 (a) *It is the intent of the Legislature that the mission*
29 *of the Prison Industry Authority shall be the providing of*
30 *productive work and training resources for inmates,*
31 *thereby fostering development of workforce skills*
32 *leading to increased employability upon release.*

1 (b) It is the intent of the Legislature that the
2 authority's mission of increasing employability of inmates
3 shall, to the extent feasible, be accomplished while
4 avoiding unnecessary displacement of California citizens
5 gainfully employed in the private sector.

6 (c) It is further the intent of the Legislature that this
7 chapter shall be designed to do all of the following:

8 (1) Revise the statutory mission of the Prison Industry
9 Authority to reflect a priority of increasing the
10 employability of inmates.

11 (2) Require an annual display of Prison Industry
12 Authority revenues and expenditures as part of the
13 annual Budget Act.

14 (3) Allow state agencies to seek waivers from purchase
15 of goods and services produced by the Prison Industry
16 Authority when evidence indicates those purchases do
17 not constitute a best value acquisition for the state when
18 compared to those products and services produced in
19 California by private companies.

20 (4) Increase program efficiency and administrative
21 accountability for fiscal stability and performance.

22 (5) Strengthen collaboration with industry and labor
23 in the planning and development of prison work
24 programs.

25 SEC. 3. Section 1170 of the Penal Code is amended to
26 read:

27 1170. (a) (1) The Legislature finds and declares that
28 the purpose of imprisonment for crime is punishment.
29 This purpose is best served by terms proportionate to the
30 seriousness of the offense with provision for uniformity in
31 the sentences of offenders committing the same offense
32 under similar circumstances. The Legislature further
33 finds and declares that the elimination of disparity and
34 the provision of uniformity of sentences can best be
35 achieved by determinate sentences fixed by statute in
36 proportion to the seriousness of the offense as determined
37 by the Legislature to be imposed by the court with
38 specified discretion.

39 (2) Paragraph (1) shall not be construed to preclude
40 programs, including educational, vocational, and drug

1 treatment programs, that are designed to rehabilitate
2 nonviolent, first-time felony offenders, and to reduce the
3 rate of recidivism. The Legislature encourages the
4 development of policies and programs designed to
5 educate and rehabilitate nonviolent, first-time felony
6 offenders consistent with the purpose of imprisonment,
7 and the intent to reduce the rate of recidivism.

8 (3) In any case in which the punishment prescribed by
9 statute for a person convicted of a public offense is a term
10 of imprisonment in the state prison of any specification of
11 three time periods, the court shall sentence the
12 defendant to one of the terms of imprisonment specified
13 unless the convicted person is given any other disposition
14 provided by law, including a fine, jail, probation, or the
15 suspension of imposition or execution of sentence or is
16 sentenced pursuant to subdivision (b) of Section 1168
17 because he or she had committed his or her crime prior
18 to July 1, 1977. In sentencing the convicted person, the
19 court shall apply the sentencing rules of the Judicial
20 Council. The court, unless it determines that there are
21 circumstances in mitigation of the punishment
22 prescribed, shall also impose any other term that it is
23 required by law to impose as an additional term. Nothing
24 in this article shall affect any provision of law that imposes
25 the death penalty, that authorizes or restricts the
26 granting of probation or suspending the execution or
27 imposition of sentence, or expressly provides for
28 imprisonment in the state prison for life. In any case in
29 which the amount of preimprisonment credit under
30 Section 2900.5 or any other provision of law is equal to or
31 exceeds any sentence imposed pursuant to this chapter,
32 the entire sentence shall be deemed to have been served
33 and the defendant shall not be actually delivered to the
34 custody of the Director of Corrections. The court shall
35 advise the defendant that he or she shall serve a period
36 of parole and order the defendant to report to the parole
37 office closest to the defendant's last legal residence, unless
38 the in-custody credits equal the total sentence, including
39 both confinement time and the period of parole. The
40 sentence shall be deemed a separate prior prison term

1 under Section 667.5, and a copy of the judgment and other
2 necessary documentation shall be forwarded to the
3 Director of Corrections.

4 (b) When a judgment of imprisonment is to be
5 imposed and the statute specifies three possible terms,
6 the court shall order imposition of the middle term, unless
7 there are circumstances in aggravation or mitigation of
8 the crime. At least four days prior to the time set for
9 imposition of judgment, either party or the victim, or the
10 family of the victim if the victim is deceased, may submit
11 a statement in aggravation or mitigation to dispute facts
12 in the record or the probation officer's report, or to
13 present additional facts. In determining whether there
14 are circumstances that justify imposition of the upper or
15 lower term, the court may consider the record in the case,
16 the probation officer's report, other reports including
17 reports received pursuant to Section 1203.03 and
18 statements in aggravation or mitigation submitted by the
19 prosecution, the defendant, or the victim, or the family of
20 the victim if the victim is deceased, and any further
21 evidence introduced at the sentencing hearing. The
22 court shall set forth on the record the facts and reasons for
23 imposing the upper or lower term. The court may not
24 impose an upper term by using the fact of any
25 enhancement upon which sentence is imposed under any
26 provision of law. A term of imprisonment shall not be
27 specified if imposition of sentence is suspended.

28 (c) The court shall state the reasons for its sentence
29 choice on the record at the time of sentencing. The court
30 shall also inform the defendant that as part of the
31 sentence after expiration of the term he or she may be on
32 parole for a period as provided in Section 3000.

33 (d) When a defendant subject to this section or
34 subdivision (b) of Section 1168 has been sentenced to be
35 imprisoned in the state prison and has been committed to
36 the custody of the Director of Corrections, the court may,
37 within 120 days of the date of commitment on its own
38 motion, or at any time upon the recommendation of the
39 Director of Corrections or the Board of Prison Terms,
40 recall the sentence and commitment previously ordered

1 and resentence the defendant in the same manner as if
2 he or she had not previously been sentenced, provided
3 the new sentence, if any, is no greater than the initial
4 sentence. The resentence under this subdivision shall
5 apply the sentencing rules of the Judicial Council so as to
6 eliminate disparity of sentences and to promote
7 uniformity of sentencing. Credit shall be given for time
8 served.

9 (e) (1) Notwithstanding any other law and consistent
10 with paragraph (1) of subdivision (a), if the Director of
11 Corrections or the Board of Prison Terms or both
12 determine that a prisoner satisfies the criteria set forth in
13 paragraph (2), the director or the board may recommend
14 to the court that the prisoner's sentence be recalled.

15 (2) The court shall have the discretion to resentence
16 or recall if the court finds both of the following:

17 (A) The prisoner is terminally ill with an incurable
18 condition caused by an illness or disease that would
19 produce death within six months, as determined by a
20 physician employed by the department.

21 (B) The conditions under which the prisoner would be
22 released or receive treatment do not pose a threat to
23 public safety.

24 The Board of Prison Terms shall make findings
25 pursuant to this subdivision before making a
26 recommendation for resentence or recall to the court.
27 This subdivision does not apply to a prisoner sentenced to
28 death or a term of life without the possibility of parole.

29 (3) Within 10 days of receipt of a positive
30 recommendation by the director or the board, the court
31 shall hold a hearing to consider whether the prisoner's
32 sentence should be recalled.

33 (4) The prisoner or his or her family member or
34 designee may request consideration for recall and
35 resentencing by contacting the chief medical officer at
36 the prison or the Director of Corrections. Upon receipt of
37 the request, if the director determines that the prisoner
38 satisfies the criteria set forth in paragraph (2), the
39 director or board may recommend to the court that the
40 prisoner's sentence be recalled. The director shall submit

1 a recommendation for release within 30 days in the case
2 of inmates sentenced to determinate terms and, in the
3 case of inmates sentenced to indeterminate terms, the
4 director may make a recommendation to the Board of
5 Prison Terms with respect to the inmates who have
6 applied under this section. The board shall consider this
7 information and make an independent judgment
8 pursuant to paragraph (2) and make findings related
9 thereto before rejecting the request or making a
10 recommendation to the court. This action shall be taken
11 at the next lawfully noticed board meeting.

12 (5) Any recommendation for recall submitted to the
13 court by the Director of Corrections or the Board of
14 Prison Terms shall include one or more medical
15 evaluations, a postrelease plan, and findings pursuant to
16 paragraph (2).

17 (6) If possible, the matter shall be heard before the
18 same judge of the court who sentenced the prisoner.

19 (f) Any sentence imposed under this article shall be
20 subject to the provisions of Sections 3000 and 3057 and any
21 other applicable provisions of law.

22 (g) A sentence to state prison for a determinate term
23 for which only one term is specified, is a sentence to state
24 prison under this section.

25 *SEC. 4. Section 2801 of the Penal Code is amended to*
26 *read:*

27 2801. The purposes of the authority are:

28 (a) To develop and operate industrial, agricultural,
29 and service enterprises employing prisoners in
30 institutions under the jurisdiction of the Department of
31 Corrections, which enterprises may be located either
32 within those institutions or elsewhere, all as may be
33 determined by the authority.

34 ~~(b) To create and maintain working conditions within~~
35 ~~the enterprises as much like those which prevail in~~
36 ~~private industry as possible, to assure prisoners employed~~
37 ~~therein the opportunity to work productively, to earn~~
38 ~~funds, and to acquire or improve effective work habits~~
39 ~~and occupational skills — To provide productive~~
40 *employment that offers inmates a significant real world*

1 *work experience and competitive work skills in order to*
2 *increase the employability of inmates upon release*
3 *through the development of skills, habit, and attitudes*
4 *that employers seek.*

5 (c) To operate a work program for prisoners—~~which~~
6 ~~that will ultimately be self-supporting—by generating~~
7 ~~sufficient funds from the sale of products and services to~~
8 ~~pay all the expenses of the program, and one which will~~
9 ~~provide goods and services which are or will be used by~~
10 ~~the Department of Corrections, thereby reducing the~~
11 ~~cost of its operation.~~

12 *SEC. 5. Section 2807 of the Penal Code is amended to*
13 *read:*

14 2807. (a) The authority is hereby authorized and
15 empowered to operate industrial, agricultural, and
16 service enterprises which will provide products and
17 services needed by the state, or any political subdivision
18 thereof, or by the federal government, or any
19 department, agency, or corporation thereof, or for any
20 other public use. Products may be purchased by state
21 agencies to be offered for sale to inmates of the
22 department and to any other person under the care of the
23 state who resides in state-operated institutional facilities.
24 Fresh meat may be purchased by food service operations
25 in state-owned facilities and sold for onsite consumption.

26 (b) All things authorized to be produced under
27 subdivision (a) shall be purchased by the state, or any
28 agency thereof,~~and may provided these products are~~
29 ~~substantially similar in either quality, cost, or availability~~
30 ~~to those available from commercial suppliers. State~~
31 ~~agencies shall request waivers from the Director of the~~
32 ~~Department of General Services for those products that~~
33 ~~do not meet criteria related to quality, cost, or availability.~~
34 *Prison Industry Authority goods and services may also be*
35 *purchased by any county, city, district, or political*
36 *subdivision, or any agency thereof, or by any state agency*
37 *to offer for sale to persons residing in state-operated*
38 *institutions, at the prices fixed by the board. State*
39 *agencies shall make maximum utilization of these*
40 *products, and shall consult with the staff of the authority*

1 to develop new products and adapt existing products to
2 meet their needs.

3 (c) The following state agencies and officers shall
4 report by January 1 of each year to the Director of
5 General Services and to the Chairperson of the Joint
6 Legislative Budget Committee on their use in the prior
7 fiscal year of goods and services provided by the
8 authority, and shall include comments on planned future
9 use of these goods and services:

10 (1) The State and Consumer Services Agency.

11 (2) The Business, Transportation and Housing
12 Agency.

13 (3) The Health and Welfare Agency.

14 (4) The Resources Agency.

15 (5) The Youth and Adult Correctional Agency.

16 (6) The California Environmental Protection Agency.

17 (7) The Department of Food and Agriculture.

18 (8) The Attorney General.

19 (9) The Secretary of State.

20 (10) The Treasurer.

21 (11) The Controller.

22 (12) The Superintendent of Public Instruction.

23 Reports submitted under this subdivision shall be
24 specific as to department and unit under each agency's or
25 office's jurisdiction.

26 *SEC. 6. Section 2808 of the Penal Code is amended to*
27 *read:*

28 2808. The board shall, in the exercise of its duties, have
29 all the powers and do all the things which the board of
30 directors of a private corporation would do, except as
31 specifically limited in this article, including, but not
32 limited to, the following:

33 (a) To enter into contracts and leases, execute leases,
34 pledge the equipment, inventory and supplies under the
35 control of the authority and the anticipated future
36 receipts of any enterprise under the jurisdiction of the
37 authority as collateral for loans, and execute other
38 necessary instruments and documents.

1 (b) To assure that all funds received by the authority
2 are kept in commercial accounts according to standard
3 accounting practices.

4 (c) To arrange for an independent annual audit.

5 (d) To review and approve the annual budget for the
6 authority, in order to assure that the solvency of the
7 Prison Industries Revolving Fund is maintained.

8 (e) To contract to employ a general manager to serve
9 as the chief administrative officer of the authority. The
10 person so appointed shall serve at the pleasure of the
11 chairman. The general manager shall have wide and
12 successful experience with a productive enterprise and
13 have a demonstrated appreciation of the problems
14 associated with prison management.

15 (f) To apply for and administer grants and contracts of
16 all kinds.

17 (g) To establish, notwithstanding any other provision
18 of law, procedures governing the purchase of raw
19 materials, component parts, and any other goods and
20 services which may be needed by the authority or in the
21 operation of any enterprise under its jurisdiction. Such
22 procedures shall contain provisions for appeal to the
23 board from any action taken in connection with them.

24 (h) To establish, expand, diminish, or discontinue
25 industrial, agricultural and service enterprises under its
26 jurisdiction to enable the authority to operate as a
27 self-supporting organization, to provide as much
28 employment for inmates as is feasible, and to provide
29 diversified work activities to minimize the impact on
30 existing private industry in the state.

31 (i) To hold public hearings pursuant to paragraph (h)
32 above to provide an opportunity for persons or
33 organizations who may be affected to appear and present
34 testimony concerning the plans and activities of the
35 authority. The authority shall assure adequate public
36 notice of such hearings. No new industrial, agricultural,
37 or service enterprise which involves a gross annual
38 production of more than fifty thousand dollars (\$50,000)
39 shall be established unless and until a hearing concerning
40 the enterprise has been held by a committee of persons

1 designated by the board including at least two board
2 members. The board shall take into consideration the
3 effect of a proposed enterprise on California industry and
4 shall not approve the establishment of the enterprise if
5 the board determines it would have a comprehensive and
6 substantial adverse impact on California industry which
7 cannot be mitigated.

8 (j) To periodically determine the prices at which
9 activities, supplies, and services shall be sold.

10 (k) To report to the Legislature in writing, on or
11 before February 1 of each year, regarding:

12 (1) The financial activity and condition of each
13 enterprise under its jurisdiction.

14 (2) The plans of the board regarding any significant
15 changes in existing operations.

16 (3) The plans of the board regarding the development
17 of new enterprises.

18 (4) A breakdown, by institution, of the number of
19 prisoners at each institution, working in enterprises
20 under the jurisdiction of the authority, said number to
21 indicate the number of prisoners which are not working
22 full time.

23 *(l) To report to the Governor and the Legislature, not*
24 *later than April 1, 2000, regarding recommendations to*
25 *maximize the ability of prison work programs to achieve*
26 *their statutory mission as provided by Section 2801.*

27 *(m) To make recommendations to maximize*
28 *utilization of prison work programs to defray*
29 *incarceration costs through strategies that include, but*
30 *are not limited to, facilitating joint ventures and public or*
31 *private partnerships that allow a significant portion of*
32 *inmate wages to be used to reduce costs of room and*
33 *board, taxes, court fees, fines, and family support.*

34 *(n) To make recommendations based on input from*
35 *representatives of both labor and the private sector on*
36 *new industries and workforce development programs*
37 *that fill an unmet labor need in the commercial*
38 *marketplace. These new industry activities may include,*
39 *but are not limited to, all of the following:*

40 *(1) Work currently being performed offshore.*

1 (2) Development of apprenticeship programs in
2 skilled trades in areas identified as having skill shortages.

3 (3) Industry program activities for which there is
4 societal benefit including environmental restoration,
5 disaster assistance projects, or manufacture of assistive
6 tools and other enhancements for disabled persons.

7 (o) To develop skills assessment tools and
8 performance measures in order to evaluate the extent to
9 which prison work programs have increased, or are
10 increasing, inmate employability upon release.

11 (p) To develop and implement continued strategies to
12 increase efficiency in business operations, including
13 results-oriented Total Quality Management programs,
14 installation of computerized systems to better track
15 product costs, establishment of a program to shorten
16 delivery schedules where feasible, and improvement of
17 marketing and market research to maximize product
18 sales.

19 (q) To develop and recommend a strategy for
20 implementation, not later than July 1, 2000, that provides
21 for tracking of inmate recidivism for purposes of
22 identifying the impact of prison work programs on
23 sustained inmate rehabilitation following release.

24 SEC. 7. Section 2808.3 is added to the Penal Code, to
25 read:

26 2808.3. The Department of Finance, in consultation
27 with the Prison Industry Authority (PIA) and the
28 Legislative Analyst's Office, shall develop a display in the
29 1999–2000 Governor's Budget of projected expenditures
30 and revenues for the PIA, the Prison Industry Board, and
31 the Prison Industries Revolving Fund.

32 SEC. 8. Section 2808.5 is added to the Penal Code, to
33 read:

34 2808.5. (a) The Bureau of State Audits shall conduct
35 a performance and financial audit of the Prison Industry
36 Authority every two years.

37 (b) The audit shall assess the following:

38 (1) The authority's performance as measured against
39 program goals, objectives, and predetermined
40 performance measures.

1 (2) *The effectiveness of applicable accounting,*
2 *inventory control, and other relevant management*
3 *procedures.*

4 (3) *The extent to which the program has achieved*
5 *self-sufficiency.*

6 (4) *An evaluation of administrative planning efforts*
7 *for adequacy and reasonableness, including whether*
8 *program goals, objectives, and performance measures*
9 *have been well defined.*

10 (5) *An assessment of the effectiveness of*
11 *administrative efforts to promote employability of*
12 *inmates upon release, including access to job training,*
13 *postrelease job placement, and reductions in recidivism.*

